IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2177 OF 2005

M/s. Adamji Lookmanji & Co. & Ors.. Petitioners

V/s.

State of Maharashtra & Anr. ... Respondents

Mr. S.V. Doijode i/b. Doijode Associates for the petitioners.

Mr. B. Shroff, Special Counsel for respondent No.1.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 26th September, 2006

P.C.

. The petitioners have challenged orders dated 25th April, 2005 and 12th October, 2004, passed by the Registrar of Firms, Maharashtra State, Mumbai under Section 69A of the Indian Partnership Act, 1932, in terms of Maharashtra Amendment Act, 29 of 1984, (for short "Mah. State Amendment"]) by which a retrospective penalty of Rs. 1,03,680/- has been levied for non-intimation of alterations in the partnership deeds dated 17.04.1972, 21.08.1975 and 18.10.1979.

2. Petitioner No. 1 M/s. Adamji Lookmanji & Co.

(for short "the firm") is a partnership firm which was registered on 18th February, 1946 under the Indian Partnership Act. Petitioner Nos. 2 to 4 are the partners of the said firm under Deeds of Partnership dated 8th December, 1982 and dated 1st December, 1999. Respondent No. 2 is the Registrar of Firms who is exercising the powers, functions and duties under the Indian Partnership Act. Mr. Adamji Yahyabhai Jasdanwala, a partner of the firm, now retired, shifted his residence on 17th April, 1972. Petitioner No. 2 shifted his residence on 21st August, 1975. Mr. Abbas Jasdanwala, now retired, also shifted his residence on 18th October, 1979. The re-constitution of the firm in the year 1982 was intimated to the office of respondent No. 2. By Deed of Partnership dated 1st December, 1999, petitioner No. 3 and petitioner No. 4 have been admitted as partners of the firm. The petitioners through their advocates lodged the Deed of Partnership dated 1st December, 1999 and Form "E" as prescribed in the Indian Partnership Act, being the notice of change of constitution of the said firm on 27th December, 1999 with respondent No. 2. As two more partners had retired from the firm, another intimation in Form "E" was submitted with respondent No. 2 on 17th January,

2000. Respondent No. 2 noted the change of address of one Adamji and Abbas and also called upon the petitioners to submit Form "D" by its intimation dated 14.03.2000. By notice dated 25th September, 2000, the petitioner was called upon to furnish documentary proof of change of address and details of the continuing partners. The advocate for the petitioners submitted the same on 4th January, 2001. Respondent No. 2 by another intimation dated 8th March, 2001 called upon the petitioners to file an affidavit stating their respective correct residential addresses and also to explain why the said changes should not be rejected, as the changes were not intimated within the period of 90 days from the date of change i.e. 4th January, 2001 as per Section 63(1A) of the Mah. State Amendment. The petitioners had complied with the said requisition on 17th May, 2002.

3. On 26th August, 2004, respondent No. 2 intimated to the petitioners about the delay of 17,280 days as per Section 62-A of the Act, in filing Form "D" and therefore called upon them to show cause why penalty of Rs. 1,72,800/- should not be levied. The petitioner made representation and explained their case. However, the Registrar of Firms Maharashtra

State by an order dated 12.10.2004 ordered penalty of Rs. 1,03,680/- and the same has been confirmed further by an order dated 25th April, 2005. Therefore, the present petition.

4. The relevant Sections of (Indian Partnership Act) Maharashtra State Amendment are:

> "**62. Noting of changes in names and addresses of partners.**
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> When any partner in a registered firm alters his name or permanent address, an intimation of the alteration' [shall be sent, within a period of 90 days from the date of making such alteration,] by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in section 61."
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> "**63. Recording of changes in and dissolution of a firm.**
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> (1) When a change occurs in the constitution of a registered firm, 1[every] incoming, continuing or outgoing partner, and when a registered firm is dissolved 1[every] persons who was a partner immediately before the dissolution, or the agent of 1[every] such partner or person specially authorised in this behalf 2[shall, within a period of 90 days from the date of such change or dissolution, give notice to the Registrar of such change or dissolution, specifying the date thereof;] and the Registrar shall make a record of the notice in the entry relating to the firm in the Registrar of Firms and shall file the notice along with statement relating to the firm filed under section 59.
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> 1(A) Where a change occurs in the

> constitution of a registered firm, all persons, who after such change are partners of the firm, shall jointly send an intimation of such change duly signed by them, to the Registrar, within a period of 90 days from the date of occurence of such change and the Registrar shall deal with it in the manner provided by section 61."
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> "69-A. Penalty for contravention of sections 60, 61, 62 or 63. - If any statement, intimation or notice under sections 60, 61, 62, 63 in respect of any registered firm is not sent or given to the Registrar, within the period specified in that section, the Registrar may, after giving notice to the partners of the firm and after giving them a reasonable opportunity of being heard, refuse to make the suitable amendments in the records relating to the firm, until the partners of the firm pay such penalty, not exceeding ten rupees per day, as the Registrar may determine in respect of the period between the date of expiry of the period specified in sections 60, 61, 62 , 63 or as the case may be, and the date of making the amendments in the entries relating to the firm" (Maharashtra Act 29 of 1984, S. 14 (w.e.f. 1-1-1985)).

5. As per the scheme of the Partnership Act, once a firm has registered alterations in firm name and principal place of business, closing and opening of branches, changes in the name and address of partners, changes in constitution and dissolution of firm, are required under Section 62, 63 to be brought to the notice of the Registrar to enable him to keep up-to-date record of the firm in the Register of Firms. However, prior to the amendment, there was no

time limit laid down within which such changes should be brought to the notice of Registrar. By the Mah. Amendment Sections 60 to 63 have been amended and as referred above, a new Section 69A has been inserted which provides payment of penalty in case of contravention of Section 60 to 63. These amendments definitely would ensure prompt compliance of various provisions and help to keep the record up-to-date only after the amendment. As per Section 62 any alteration in the name or permanent address of any partner in a registered firm, after the Maharashtra State Amendment has come into force w.e.f. 01.01.1985, should be sent within a period of 90 days from the date of making such alterations. Prior to this amendment, the words were "may be sent". Now the words which are substituted are "shall be sent within a period of 90 days from the date of making such alterations". It is therefore mandatory after the amendment to send such intimation within a period of 90 days from the date of such alteration. There was no such time limit prior to 01.01.1985 in absence of the Maharashtra State Amendment. The substitution of the word "may be sent" by "shall be sent" by the Maharashtra State Amendment, makes it clear that the words "may be sent", were never intended to be mandatory. The legislation in

making the amendment so understood. Therefore, prior to 01.01.1985 an intimation of the alteration in the name of permanent address of registered partnership firm was not mandatory or atleast not intended to charge the parties with liability of a penalty as provided now under Section 69A of Maharashtra State Amendment as referred to above.

. Section 69A requires that if any statement, intimation or notice under section 60, 61, 62 or 63 in respect of any registered firm, if not sent or given to the Registrar within a specified period as provided in those sections, the Registrar may, after notice to the partners of the firm and after giving them a reasonable opportunity, refuse to make suitable amendment in the record, until the partners of the firm, pay such penalty, not exceeding Rs. 10/- per day, as Registrar may determine in respect of the period between the date of expiry of the period specified in those sections and/or as the case may be and the date of making amendment in the entries relating to the firm. On a combined reading of Section 62 and 69 of Mah. State Amendment, it is now mandatory w.e.f. 01.01.1985 for the partners to intimate the changes in the name of address of

partners within a period of 90 days from the date of making such alterations, to avoid payment of penalty.

6. The importance of the intimations and notices as contemplated under Section 61, 62 & 63 of the Act in the prescribed form need to be followed by the concerned person. This means intimation or notice of change of location of the principal place of the firm, address of business, the name of partner and his permanent address need to be given. This was the position prior to the Mah. amendment. There were no prescribed time or clauses of penalty earlier, as added, after 01.01.1985, by the Mah.amendment including Sections 60, 61, 62, 63, 69A, which provide the penal provisions, which in absence of any specific intention cannot be used for the events which took place prior to the Mah. amendment.

7. In the present case, the petitioners have intimated in Form "D" to the respondent, the Registrar of Firms on 4th January, 2001 about the changes in the names and the address of the firm which were made on 17.04.1972, 21.08.1975 and 18.10.1979. There was delay of 17, 271 days as per respondent No. 2. Based on the same, from the date of intimation, the

respondents have levied the penalty of Rs. 1,03,680/- by invoking provisions of Section 69A of the Mah. State Amendment.

8. The effective date of Mah. State Amendment is 01.01.1985. There is nothing mentioned anywhere or pointed out that this Mah. Amendment has any retrospective effect. In view of Section 69A, admittedly power has been given to the respondents to impose penalty, subject to hearing the concerned parties. The consequence of non-intimation by the petitioners in respect of entries made or effected prior to 01.01.1985 has resulted into the penalty in question. The Mah. State Amendment, nowhere provides and gives power to respondent No. 2 to impose penalty, based on the prior action and or non-action committed by the petitioners, when there was no such Mah. State Amendment on the Statute book. Therefore such a demand is totally illegal and without jurisdiction. Respondent No. 2 in absence of retrospective effect of Mah. State Amendment has no jurisdiction to charge or impose penalty based on the events which took place prior to 01.01.1985.

9. As settled the word "may" generally does not

mean "must" or "shall". But, it is well-settled that the word"may" is capable of meaning "must" or shall in the light of the context. (AIR 1963 Supreme Court 1618 - State of Uttar Pradesh V/s. Jogendra Singh). In view of the subsequent insertion of word shall itself makes the intention of legislature further clear that prior to that the word "may" need to be read in the context in which a clause incorporated under the Act. A plain reading of the unamended section indicates that there was no compulsion on the part of the parties to submit the details as contemplated in the newly amended provisions. The mandate of amended provision made the parties under an obligation to submit the details within 90 days. Even after considering the provisions of the Partnership Act and related rules, there is nothing to suggest that the word "may" was intended to read as "shall" prior to the Mah. State amendment. There was no such day-to-day penalty, as now provided by the amendment.

10. "When the words of statue are clear, plain or unambiguous, and reasonably susceptible of only one meaning, the Courts are bound to give effect to that meaning irrespective of the consequences. The intention of the legislature is primarily to be

gathered from the language used. The attention should be paid to what has been said in the statute as also to what has not been said" (2003 (5) SCC 134 J.P. Bansal V/s. State of Rajasthan (as followed in 2005 (10) S.C.C. 437, State of Jharkhand and another V/s. Govind Singh.

11. The Apex Court while dealing with the construction of a penal statute, has observed in Krishi Utpadan Mandi Samiti V/s. Pilibhit Pantnagar Beej Ltd., (2004) 1 SCC 412 as under :-

> "58. In the case of London and North Eastern Rly. Co. V. Berriman,(1946 AC 278:(1946) 1 All ER 255 (HL) Lord Simonds quoted with approval (all ER p. 270 C-D) the following observations of Lord Esher, M.R. in the case of Tuck & Sons V. Priester QBD at p. 638 (1987) 19 QBD 929: 56 LJ QB 553 (CA):
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> 'We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for the construction of penal sections.'
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> It is trite that fiscal statute must not only be construed literally, but also strictly. It is further well known that if in terms of the provisions of a penal statute a person becomes liable to follow the provisions thereof it should be clear

> and unambiguous so as to let him know his legal obligations and liabilities thereunder.
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> 59. The matter may be considered from another angle" "expressio unius personae vel rei est exclusio alterius" is a well known maxim which means the express intention of the person or thing is the exclusion of another. The said maxim is applicable in the instant case. [See Khemka & Co. (Agencies) (P) Ltd. v. State of Maharashtra, (1975) 2 SCC 22: 1975 SCC (Tax) 227, SCC paras 47 and 48]."

12. The effect of the amendment as noted is that if party failed to comply with the said provisions, they are bound to face penal consequences. That was not the position prior to the amendment. The intention of the legislature by this amendment is absolutely certain and clear and there is no ambiguity or confusion in its application. The effect is therefore that such penal statute and/or consequences or liability, cannot be made applicable to the events which took place prior to the date of amendment in question. There is nothing borne out from the record that the amendment in question has retrospective effect. The parties or person cannot be punished by the new amendment for the events which took place prior to the said amendment as there was no intention of the legislature, at the relevant time to claim such penalty. It is settled that the penal/criminal

statute should be absolutely certain and clear and there should not be ambiguity or confusion in its application (2005 (4) S.C.C. 350, State of H.P. V/s. Pawan Kumar.).

13. The Apex Court in Vijay V/s. State of Maharashtra and others, (2006) 6 Supreme Court 289, observed that:

> . "The cardinal principle is that statutes must always be interpreted prospectively, unless the language of the statutes makes them retrospective, either expressly or by necessary implication. Penal statutes which create new offences are always prospective, but penal statues which create disabilities, though ordinarily interpreted prospectively, are sometimes interpreted retrospectively when there is a clear intendment that they are to be applied to past events. The reason why penal statutes are so construed was stated by Erle, C.J. in Midland Rly. Co. V. Pye (CBNS at p. 191) (1861) 10 CBNS 179:142 ER 419:30 CJCP 314, in following words:
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> . 'Those whose duty is to administer the law very properly guard against giving to an Act of Parliament a retrospective operation, unless the intention of the legislature that it should be so construed is expressed in clear, plain and unambiguous language; because it manifestly shocks one's sense of justice that an act, legal at the time of doing it, should be made unlawful by some new enactment.'
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> This principle has now been recognised by our Constitution and established as a constitutional restriction on legislative

> power" As observed by Hidayatullah, J., in State of Maharashtra v. Vishnu Ramchandra, (1961) 2 SCR 26 at p. 30.

14. In Baleshwar Bagarti v/s. Bhagirathi Dass ILR 35 Cal. 701 at 713 the principle, which was reiterated in Mathura Mohan Saha v/s. Ram Kumar Saha ILR 43 Cal. 790:AIR 1916 Cal 136, has been stated by Mookerjee, J. thus :

> "It is well settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it - I do not suggest for a moment that such interpretation has by any means a controlling effect upon the courts; such interpretation may, if occasion arises, have to be disregarded for cogent and persuasive reasons, and in a clear case of error, a court would without hesitation refuse to follow such construction."

15. Therefore, the demand of such penalty in respect of changes effected prior to 01.01.1985 is without the authority of law. Any change or alteration if made in terms of Sections 60, 61, 62 or 63, prior to the Amendment by Mah. Act 29 of 1984 will be governed by the provisions of law as they stood before the amendment. Even in respect of such change if a party applies for effecting the change or

alterations after the Amendment Act has came into force, considering the language and perusing the ambit of Section 69, it will be governed by the law before the Amendment. It is only change or alteration after the amendment which will be governed by the amended provision. The above demand is therefore illegal, bad and without jurisdiction. The respondents at the highest can consider and/or impose penalty in respect of changes which took place after 01.01.1985.

16. The petitioners have also sought relief by way of prayer clause (c). The petitioners subject to their explanation, if any, need to be heard in the matter before passing any order on the basis of non-intimation of change as contemplated under Section 62 of the Maharashtra State Amendment insofar as any alteration or amendment after 01.01.1985.

17. Taking all these into account the impugned orders dated 12th October, 2004 and 25th April, 2005 passed by the respondent No. 2 are quashed and set aside. The petition is allowed in terms of prayer clause (a). Insofar as prayer (c) is concerned it will be open to the respondents to reconsider the issue and after hearing the petitioners to pass an

appropriate order according to law. No order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]